

In The Matter Of:

IN RE: REFCO, INC. SECURITIES LITIGATION

RAPHAEL THOMAS WALLANDER - Vol. 1 30(B)(6)

November 8, 2011

***(PAGE 214 Designated Confidential Pursuant to
Protective Order)***

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RAPHAEL THOMAS WALLANDER - 11/8/2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In re REFCO, INC. SECURITIES
LITIGATION 07-MD-1902
(JSR)

-----x

MARC S. KIRSCHNER, as Trustee of the
Refco Private Actions Trust,

Plaintiff,

-against- Case No. 07-CV-8165
(JSR)

PHILLIP R. BENNET, et al.,

Defendants.

-----x

GRANT THORNTON LLP,

Defendant/Third-Party Plaintiff,

-against-

THOMAS H. LEE PARTNERS, L.P., et al.,

Third-party Defendants.

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Protective Order)

November 8, 2011

9:39 a.m.

Videotaped 30(b)(6) deposition of
WAYSATA INVESTMENT PARTNERS LLC, by RAPHAEL
THOMAS WALLANDER, at the offices of Winston &
Strawn LLP, 200 Park Avenue, New York, New
York, before MARK RICHMAN, a Certified
Shorthand Reporter, Registered Professional
Reporter and Notary Public within and for the
State of New York.

<p style="text-align: right;">Page 22</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 years. What was your start date with</p> <p>3 Rider Bennett?</p> <p>4 A. I started as a summer</p> <p>5 associate in I want to say May of 1998.</p> <p>6 I started as a lawyer roughly call it</p> <p>7 September 1 of 2000 -- or of 1999 and</p> <p>8 that date may be, you know, it may be a</p> <p>9 little off but roughly that time period.</p> <p>10 Q. And you make that distinction</p> <p>11 because prior to that you hadn't finished</p> <p>12 law school and been admitted to the bar?</p> <p>13 A. Yes. I studied for the bar</p> <p>14 exam. And technically, I guess if we</p> <p>15 really want to get technical, my bar</p> <p>16 admission was October of 1999 and I don't</p> <p>17 think the designation of representing</p> <p>18 one's self as an attorney happens until</p> <p>19 you get your bar admission. But I went</p> <p>20 back to work as an associate in the fall</p> <p>21 of 1999.</p> <p>22 Q. That's a very fairly short</p> <p>23 partnership track then?</p> <p>24 A. It was.</p> <p>25 Q. Was that accelerated at all or</p>	<p style="text-align: right;">Page 24</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 with the banking, some of the banking</p> <p>3 lawyers. I also -- there wasn't really a</p> <p>4 department for it but an offshoot of my</p> <p>5 practice was that I did a fair amount of</p> <p>6 franchise and distribution work that kind</p> <p>7 of came naturally with some creditor work</p> <p>8 that I did.</p> <p>9 Q. So would you consider yourself</p> <p>10 during your tenure at Rider Bennett to</p> <p>11 have done both litigation work and</p> <p>12 corporate work?</p> <p>13 A. I was kind of a mutt.</p> <p>14 Nominally the bankruptcy group was in the</p> <p>15 litigation department, but it was never a</p> <p>16 perfect fit and, and invariably</p> <p>17 bankruptcy is inherently transactional at</p> <p>18 times.</p> <p>19 Q. So you stayed with Rider</p> <p>20 Bennett a little less than a decade, from</p> <p>21 roughly May of '98 to some portion of</p> <p>22 2007; is that correct?</p> <p>23 A. No. Until Feb 1 of 2006 and</p> <p>24 then I left and I went to a small firm</p> <p>25 for about a year.</p>
<p style="text-align: right;">Page 23</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 was that the standard time frame at your</p> <p>3 firm?</p> <p>4 A. You know, yes and no is the</p> <p>5 answer. The partnership track changed</p> <p>6 while I was there. And I, I don't know</p> <p>7 that I was terribly special and I don't</p> <p>8 know that I was necessarily the reason</p> <p>9 for some of the changes, but I put myself</p> <p>10 at average.</p> <p>11 Q. How large was that law firm,</p> <p>12 sir?</p> <p>13 A. At one point in time, it was</p> <p>14 about 160 lawyers. When I left, I would</p> <p>15 put it at about a hundred lawyers, and</p> <p>16 these are approximations.</p> <p>17 Q. Did it have offices outside</p> <p>18 Minnesota?</p> <p>19 A. No.</p> <p>20 Q. So just Minnesota?</p> <p>21 A. Just Minneapolis.</p> <p>22 Q. What department did you work</p> <p>23 in at Rider Bennett?</p> <p>24 A. I was in the, the bankruptcy</p> <p>25 group. I also did a fair amount of work</p>	<p style="text-align: right;">Page 25</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 Q. Oh, and then you joined</p> <p>3 Waysata?</p> <p>4 A. Waysata.</p> <p>5 Q. In '07?</p> <p>6 A. Yes.</p> <p>7 Q. Got it.</p> <p>8 A. And the name of that firm,</p> <p>9 I'll answer your next question, is</p> <p>10 Morhman, M-O-H-R-M-A-N and Kaardal,</p> <p>11 K-A-A-R-D-A-L, and that I had the same</p> <p>12 practice and the same clients at that</p> <p>13 firm. It didn't really change at all.</p> <p>14 Q. And if you could give me a</p> <p>15 little bit more of an understanding as to</p> <p>16 what precipitated you leaving Rider</p> <p>17 Bennett and joining Morhman?</p> <p>18 A. Sure. Firm was in financial</p> <p>19 trouble. I kind of saw the full books</p> <p>20 for the first time when I made partner.</p> <p>21 And, you know, I'm a restructuring</p> <p>22 lawyer, I kind of have some ability to</p> <p>23 see what direction the train was going in</p> <p>24 and I thought it was going steadily in</p> <p>25 the wrong direction, and just got</p>

7 (Pages 22 to 25)

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<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 Adams, the former general counsel fairly</p> <p>3 closely on a lot of things and she, I</p> <p>4 believe, worked with him to some extent</p> <p>5 on this. And I frankly just wanted to</p> <p>6 pick her brain to kind of see if she</p> <p>7 remembered anything maybe anybody else</p> <p>8 maybe didn't to try to get, to get the</p> <p>9 institutional memory to the greatest</p> <p>10 extent I could.</p> <p>11 Q. Do you know whose email</p> <p>12 accounts, if any, were searched at</p> <p>13 Waysata in connection with the Wayland</p> <p>14 funds document production?</p> <p>15 A. Email accounts searched?</p> <p>16 Q. Yes.</p> <p>17 A. We, we produced documents that</p> <p>18 we had. We didn't go back to '04 and</p> <p>19 '05. I don't know that we actually still</p> <p>20 have the capability of searching back</p> <p>21 that far.</p> <p>22 Q. So when you say you produced</p> <p>23 documents, where were these documents</p> <p>24 located?</p> <p>25 A. Our operations staff had</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 files were searched and produced to the</p> <p>3 PAT for production in this case?</p> <p>4 A. I, I don't. All I know is</p> <p>5 that we produced some documents that I</p> <p>6 thought were responsive to that. And</p> <p>7 I'll say that this wasn't a document</p> <p>8 subpoena that we received so the normal</p> <p>9 protocols for that type of thing, you</p> <p>10 know, we asked people what do you know,</p> <p>11 what do you have. But that's sort of</p> <p>12 subpoena duces tecum type approach was</p> <p>13 not, it's not the same approach for a</p> <p>14 subpoena of this nature.</p> <p>15 Q. Did you personally make any</p> <p>16 physical search for documents or did you</p> <p>17 simply review documents that had been</p> <p>18 provided to you by the operations team at</p> <p>19 Waysata?</p> <p>20 A. I reviewed things of the</p> <p>21 operations team. I didn't have -- I</p> <p>22 wasn't at the firm, so I reviewed what</p> <p>23 was given to me.</p> <p>24 Q. And who provided you with</p> <p>25 those documents, sir?</p>
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<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 copies of them. I, I can't tell you</p> <p>3 exactly physically within the building</p> <p>4 where they were, but somebody had folders</p> <p>5 and things of that nature.</p> <p>6 Q. So these were all hard copies?</p> <p>7 A. I don't know if we had any</p> <p>8 scanned in. I know that I -- ultimately</p> <p>9 there were PDF's made of them. I suspect</p> <p>10 that somebody might have had some stored</p> <p>11 electronically but I don't know.</p> <p>12 Q. Is that how you ultimately saw</p> <p>13 the documents, only in PDF forms?</p> <p>14 A. No, I had printed copies. I'm</p> <p>15 old fashioned. I sat down and read them.</p> <p>16 Q. But somebody sent you PDF's</p> <p>17 and then you printed them out and read</p> <p>18 through them?</p> <p>19 A. No, I think somebody actually</p> <p>20 handed me copies of them and I said let's</p> <p>21 make PDF's and let's get them on to, to</p> <p>22 Sascha.</p> <p>23 Q. As you sit here today, Mr.</p> <p>24 Wallander, do you know for a fact whether</p> <p>25 or not any email accounts or electronic</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 A. The people I listed, Sue</p> <p>3 Peterson, Tracey Calderon, Linda Gans,</p> <p>4 it's a group effort, Mary. You know,</p> <p>5 there's no, no magic to it. I can't tell</p> <p>6 you each specific document, who actually</p> <p>7 had it, but we came up with the best we</p> <p>8 could for something that's six years old.</p> <p>9 (Deposition Exhibit 3181,</p> <p>10 previously marked and shown to</p> <p>11 witness.)</p> <p>12 Q. Okay. Sir, let me show you</p> <p>13 what's been marked at a previous</p> <p>14 deposition as exhibit 3181. Have you</p> <p>15 seen this before, sir?</p> <p>16 A. This looks like one of the</p> <p>17 notices that we've referenced.</p> <p>18 Q. So you believe exhibit 3181 is</p> <p>19 one of the document notices that you</p> <p>20 believe you became aware of in the last</p> <p>21 one or two weeks; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. So you believe that Waysata</p> <p>24 had received this very document from the</p> <p>25 Private Actions Trust?</p>

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<p style="text-align: right;">Page 98</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 ultimately recovered by the PAT and</p> <p>3 disbursed to FX customers, Waysata or the</p> <p>4 Wayland funds are not going to be a</p> <p>5 recipient, an ultimate recipient of any</p> <p>6 of that recovery, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Could you turn to the next</p> <p>9 page in exhibit 3181 please. On the back</p> <p>10 side there's a list of nine types of</p> <p>11 documents that the Wayland funds were</p> <p>12 requested to produce in this case. Do</p> <p>13 you see those nine bullet points?</p> <p>14 A. Correct. I see them.</p> <p>15 Q. Could you please take a moment</p> <p>16 to read this list to yourself and let me</p> <p>17 know when you're finished.</p> <p>18 A. Okay.</p> <p>19 Q. Sir, do you believe as you sit</p> <p>20 here today that the Wayland funds have</p> <p>21 produced all responsive documents in</p> <p>22 their possession, custody and control</p> <p>23 from these nine categories?</p> <p>24 A. Again, noting that some of</p> <p>25 these funds no longer exist and we can't</p>	<p style="text-align: right;">Page 100</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 worth noting.</p> <p>3 When Wayland was inside, when</p> <p>4 Waysata before it became Waysata was</p> <p>5 inside Cargill, many of these accounts as</p> <p>6 I understand it, as has been told to me</p> <p>7 by our operations staff, were set up with</p> <p>8 CIS, the sort of proprietary currency</p> <p>9 trading operation at Cargill.</p> <p>10 Those accounts were sold to</p> <p>11 Refco. So when these accounts were</p> <p>12 actually set up, the counterparty to the</p> <p>13 agreement would have been a Cargill</p> <p>14 entity, and at the time Wayland was a</p> <p>15 counter -- was a Cargill entity itself,</p> <p>16 and generally doing diligence on another</p> <p>17 entity within your own organization is</p> <p>18 not customary. So I'm not shocked that</p> <p>19 we don't have anything like that. And</p> <p>20 it's a little bit of an odd-ball for an</p> <p>21 account to get transferred like this,</p> <p>22 that's the one thing I would note.</p> <p>23 But I did ask and nobody had</p> <p>24 anything of that nature.</p> <p>25 Q. And we will get into all those</p>
<p style="text-align: right;">Page 99</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 really produce on behalf of them even,</p> <p>3 you know, just ticking through the list,</p> <p>4 the customer agreements, the customer</p> <p>5 statements, I asked about these entities</p> <p>6 and we kind of gave what we have, or</p> <p>7 about these documents, we gave what we</p> <p>8 could find on them.</p> <p>9 Q. I want to ask you in</p> <p>10 particular about number 5, the fifth</p> <p>11 bullet point. That asks for the</p> <p>12 production of "Audit materials related to</p> <p>13 Refco including all documents related to</p> <p>14 Grant Thornton LLP's audits of Refco or</p> <p>15 RCM." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. I haven't seen any documents</p> <p>18 in this category from the Wayland funds</p> <p>19 production. Do you know whether the</p> <p>20 Wayland funds have any documents relating</p> <p>21 to Grant Thornton's audits of Refco or</p> <p>22 RCM?</p> <p>23 A. We didn't see any. That's not</p> <p>24 to say we didn't have them. There's a</p> <p>25 little bit of a history to this that is</p>	<p style="text-align: right;">Page 101</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 details in a minute.</p> <p>3 A. Sure.</p> <p>4 Q. Because I want to discuss that</p> <p>5 issue with you.</p> <p>6 A. Sure.</p> <p>7 Q. I just want to make sure that</p> <p>8 you didn't have any documents that relate</p> <p>9 to Grant Thornton's audits of Refco or</p> <p>10 RCM?</p> <p>11 A. No, none that anybody was</p> <p>12 aware of or that we could find.</p> <p>13 Q. Do -- does Waysata or the</p> <p>14 Wayland funds have any type of written</p> <p>15 retention document policy?</p> <p>16 A. Boy, what is our -- we retain</p> <p>17 things generally for tax purposes for a</p> <p>18 fairly long period of time. One other</p> <p>19 hiccup with this is this is when we were</p> <p>20 at Cargill so there may very well be</p> <p>21 documents not in the our possession that</p> <p>22 would relate to this and if -- and I</p> <p>23 guess when I think about it the Refco</p> <p>24 transaction happened afterwards.</p> <p>25 Yeah, you know we, we have a</p>

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<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 accounts with RCM, correct?</p> <p>3 A. Yes, some of which no -- or</p> <p>4 entities no longer exist.</p> <p>5 MR. RAND: I'm going to</p> <p>6 object, I'm going to object to</p> <p>7 form. Go ahead.</p> <p>8 Q. Do you know how many FX</p> <p>9 trading accounts each of the Wayland</p> <p>10 funds had with RCM?</p> <p>11 A. How many specific individual</p> <p>12 accounts?</p> <p>13 Q. Right.</p> <p>14 A. You know, without documents in</p> <p>15 front of me it's difficult to say. I</p> <p>16 know that there were I think multiple</p> <p>17 trades and I don't know if each trade got</p> <p>18 a different account number or if it was</p> <p>19 in a different account or not. Without</p> <p>20 looking at documents it would be tough to</p> <p>21 say the precise number of accounts. It</p> <p>22 might be more than 8. But I know that</p> <p>23 each of these eight funds generally had</p> <p>24 some type of trading activity and thus an</p> <p>25 account with.</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 a decision to transfer might be perhaps a</p> <p>3 mischaracterization is the right word but</p> <p>4 maybe an overstatement.</p> <p>5 CIS, and it is okay if I call</p> <p>6 it the Cargill entity CIS?</p> <p>7 Q. Sure.</p> <p>8 A. CIS effectively sold these</p> <p>9 accounts to Refco and Waysata received</p> <p>10 notices that this transfer was happening</p> <p>11 and it was sort of a speak now or forever</p> <p>12 hold your piece transfer.</p> <p>13 And I believe it was a</p> <p>14 relatively short window of time in which</p> <p>15 to effectuate that transfer. Or I'm</p> <p>16 sorry, to object to that transfer.</p> <p>17 Q. Are you aware of any</p> <p>18 individuals that were involved in the</p> <p>19 decision as to whether or not to object</p> <p>20 to that transfer?</p> <p>21 A. Am I aware of individuals,</p> <p>22 yes.</p> <p>23 Q. Who would have been involved</p> <p>24 in that decision?</p> <p>25 A. A lot of the same people I've</p>
Page 107	Page 109
<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 Q. And some of them may have had</p> <p>3 multiple accounts with RCM?</p> <p>4 A. I don't know. Without looking</p> <p>5 at, without looking at documents it's</p> <p>6 tough to know. I know that these had</p> <p>7 these trades on.</p> <p>8 Q. You indicated that prior to</p> <p>9 transferring their accounts to RCM, all</p> <p>10 of the Wayland funds had FX trading</p> <p>11 accounts with CIS Financial Services,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. That's a subsidiary of</p> <p>15 Cargill?</p> <p>16 A. Correct.</p> <p>17 Q. And then in 2005 all of these</p> <p>18 accounts were transferred from CIS</p> <p>19 Financial Services to RCM, right?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who at Waysata or</p> <p>22 the Wayland funds was involved in the</p> <p>23 decision to transfer these accounts to</p> <p>24 RCM?</p> <p>25 A. I think saying that there was</p>	<p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 mentioned before, Pat Halloran, Mary</p> <p>3 Burns, Sue Peterson, Linda Gans, maybe</p> <p>4 Tracey, probably Steve Adams might have</p> <p>5 had, I'm assuming would have had some</p> <p>6 input, though at that point not much.</p> <p>7 Q. You weren't at the company at</p> <p>8 the time?</p> <p>9 A. I was not there. But I did</p> <p>10 ask the question internally about what</p> <p>11 happened. And everybody's recollection</p> <p>12 was that CIS made this transfer and</p> <p>13 frankly it would have been more work to</p> <p>14 try to unwind the trades and perhaps</p> <p>15 uneconomic to do so.</p> <p>16 Q. Between the time that the</p> <p>17 Wayland fund accounts opened and the time</p> <p>18 that they were transferred to RCM, did</p> <p>19 the Wayland funds use any other</p> <p>20 counterparties besides CIS for FX</p> <p>21 trading?</p> <p>22 A. None that anybody remembered.</p> <p>23 I, I actually inquired and nobody</p> <p>24 recalled there being any other</p> <p>25 counterparty. And the suspicion that</p>

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<p style="text-align: right;">Page 122</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 paragraph 3A gives CIS the right and</p> <p>3 ability to use funds deposited by FX</p> <p>4 customers as it sees fit?</p> <p>5 A. You're asking me to make a</p> <p>6 snap decision about what this provision</p> <p>7 means in the context of a very small font</p> <p>8 several page agreement. I'm not -- I'm</p> <p>9 not going to go past saying the language</p> <p>10 says what it says. I don't think it's</p> <p>11 appropriate for me to make an</p> <p>12 interpretation, and I don't think that</p> <p>13 it's within the scope of what I've been</p> <p>14 subpoenaed today.</p> <p>15 Q. Do you have any understanding,</p> <p>16 sir, as somebody who is one of the few</p> <p>17 in-house lawyers at Waysata, as to</p> <p>18 whether or not FX trading accounts are</p> <p>19 typically segregated or nonsegregated?</p> <p>20 A. My guess is after, after</p> <p>21 Refco, these agreements all got a</p> <p>22 makeover. I don't, I don't have an</p> <p>23 opinion on that one way or another.</p> <p>24 Q. So you don't --</p> <p>25 A. I think it would probably</p>	<p style="text-align: right;">Page 124</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 there is there an I object stated next to</p> <p>3 it. So they executed these documents and</p> <p>4 they speak for themselves.</p> <p>5 Q. Are you aware of any</p> <p>6 discussions that went on at the Wayland</p> <p>7 funds or at Waysata about whether the</p> <p>8 funds in their FX trading accounts would</p> <p>9 be segregated?</p> <p>10 A. I'm not aware of any</p> <p>11 discussions of that nature.</p> <p>12 Q. Do you recall that being</p> <p>13 raised as a concern on the part of</p> <p>14 anybody at Waysata or the, the Wayland</p> <p>15 funds?</p> <p>16 A. I wasn't there at the time and</p> <p>17 no one noted to me that this issue was</p> <p>18 raised prior to the problems that arose</p> <p>19 with Refco.</p> <p>20 Q. Do you know, sir, exactly when</p> <p>21 the Wayland funds's FX trading accounts</p> <p>22 at Cargill were transferred to RCM?</p> <p>23 A. I have a general sense of the</p> <p>24 time frame that it was roughly August of</p> <p>25 2005. And if we can turn to the front</p>
<p style="text-align: right;">Page 123</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 depend on who the counterparty is. If</p> <p>3 the counterparty is a JPMorgan or a</p> <p>4 Credit Suisse or a very, very, very</p> <p>5 liquid deep investment grade institution,</p> <p>6 my guess is provisions like this are</p> <p>7 probably not unheard of, though that may</p> <p>8 have changed in recent years.</p> <p>9 If the, if the institutions</p> <p>10 are not investment grade or of shakier</p> <p>11 credit, I speculate, I don't know, that</p> <p>12 these provisions would probably be more</p> <p>13 heavily negotiated in these -- in this</p> <p>14 current era.</p> <p>15 Q. I take it you don't have any</p> <p>16 familiarity, though, with that issue?</p> <p>17 A. I haven't, I haven't addressed</p> <p>18 it before.</p> <p>19 Q. Is it fair to say, sir, that</p> <p>20 in the 2004-2005 time frame, the Wayland</p> <p>21 funds did not object to this language in</p> <p>22 any way?</p> <p>23 A. Well I mean the document</p> <p>24 speaks for itself. The Wayland funds</p> <p>25 executed these documents and nowhere in</p>	<p style="text-align: right;">Page 125</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 page of this letter, this actually</p> <p>3 verifies what my colleagues told me was</p> <p>4 the general time line.</p> <p>5 Q. We're going to look at that</p> <p>6 letter in a second. But before the</p> <p>7 account transfer, sir, had the Wayland</p> <p>8 funds ever had any type of business</p> <p>9 relationship with RCM?</p> <p>10 A. I believe the answer is no. I</p> <p>11 think this was, this relationship was</p> <p>12 fully inherited through this transfer.</p> <p>13 Q. Before the transfer of the</p> <p>14 Wayland funds FX trading accounts to RCM,</p> <p>15 had the Wayland funds ever done business</p> <p>16 with any Refco entity?</p> <p>17 A. I, I garnered information much</p> <p>18 more narrowly than that for this</p> <p>19 deposition so it's a supposition for me</p> <p>20 to give an emphatic no to that, but I</p> <p>21 believe that is correct. Based on what I</p> <p>22 have been told, I believe that is the</p> <p>23 case.</p> <p>24 Q. You're not aware of any</p> <p>25 relationship between any of the Wayland</p>

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<p style="text-align: right;">Page 130</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 recent announcement concerning a</p> <p>3 provisional agreement to sell the entire</p> <p>4 global business of Cargill Investor</p> <p>5 Services to Refco, correct?</p> <p>6 A. That's what the letter says</p> <p>7 what it says. I think when you ask me to</p> <p>8 sort of describe contents of a letter</p> <p>9 you've just handed to me, I would just</p> <p>10 referring to the letter itself and say,</p> <p>11 you know, it says what it says.</p> <p>12 Q. Okay. The first sentence</p> <p>13 reads as follows: "Dear Ms. Burns,</p> <p>14 Further to our recent announcement I</p> <p>15 wanted to put in writing more detail</p> <p>16 regarding the provisional agreement to</p> <p>17 sell the entire global business of</p> <p>18 Cargill Investor Services to Refco."</p> <p>19 Correct?</p> <p>20 A. That's what it says.</p> <p>21 Q. I've read that correctly?</p> <p>22 A. That's what it says.</p> <p>23 Q. Prior to the transfer of the</p> <p>24 Wayland funds FX trading accounts to RCM,</p> <p>25 what if any discussions took place</p>	<p style="text-align: right;">Page 132</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 Wayland funds required or obligated in</p> <p>3 any way to transfer their FX trading</p> <p>4 accounts to RCM?</p> <p>5 A. No.</p> <p>6 Q. Could they have chosen to take</p> <p>7 their business elsewhere?</p> <p>8 A. They certainly could have.</p> <p>9 Q. Could you turn back to exhibit</p> <p>10 3244 please.</p> <p>11 A. Sure.</p> <p>12 Q. The very first page of this</p> <p>13 exhibit is a letter from Steve Assimos of</p> <p>14 Cargill Financial Services to Susan</p> <p>15 Peterson of Waysata, correct?</p> <p>16 A. That's what it is.</p> <p>17 Q. Dated August 15th, 2005?</p> <p>18 A. That appears to be the date.</p> <p>19 Q. And this is the letter that</p> <p>20 you've been referring to at various</p> <p>21 points during the deposition as a</p> <p>22 negative consent letter, right?</p> <p>23 A. Yep.</p> <p>24 Q. Do you know who Mr. Assimos</p> <p>25 is?</p>
<p style="text-align: right;">Page 131</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 between Waysata and Cargill about that</p> <p>3 agreement?</p> <p>4 A. Nobody remembered anything</p> <p>5 specific. Just knowing that there's</p> <p>6 enough folks at Waysata that know folks</p> <p>7 at Cargill, I wouldn't be shocked if in</p> <p>8 an informal conversation or even an email</p> <p>9 there might have been. I haven't seen</p> <p>10 anything specific. So what I would say</p> <p>11 is there might have been some</p> <p>12 communications. It wouldn't be</p> <p>13 surprising to me. But nobody has</p> <p>14 enunciated to me anything specific.</p> <p>15 Q. To your knowledge did any</p> <p>16 representatives from Cargill make any</p> <p>17 representations to Waysata about the</p> <p>18 quality or the level of service that RCM</p> <p>19 would provide?</p> <p>20 A. Gosh, I mean this letter sort</p> <p>21 of purports -- it's more like puffery</p> <p>22 than an actual firm rep and warrant. But</p> <p>23 outside of this there's nothing to my</p> <p>24 knowledge.</p> <p>25 Q. To your knowledge, were the</p>	<p style="text-align: right;">Page 133</p> <p>1 RAPHAEL THOMAS WALLANDER</p> <p>2 A. No.</p> <p>3 Q. You never spoken or</p> <p>4 communicated with the man?</p> <p>5 A. No.</p> <p>6 Q. This letter informs Waysata</p> <p>7 that unless someone objects, I think you</p> <p>8 used the word squawks, on behalf of the</p> <p>9 Wayland funds, the funds' accounts will</p> <p>10 be transferred to RCM?</p> <p>11 A. Hence my characterization of</p> <p>12 it as a negative consent, it's -- it</p> <p>13 requires you to affirmatively do</p> <p>14 something in order to take that step.</p> <p>15 Q. Are you aware of any response</p> <p>16 that any of the Wayland funds made to</p> <p>17 this letter?</p> <p>18 A. Based on my review, and I</p> <p>19 wasn't around at the time, I don't think</p> <p>20 we responded. I think we just elected to</p> <p>21 allow the accounts to get transferred.</p> <p>22 Q. During this time period, do</p> <p>23 you know whether Waysata or any of the</p> <p>24 Wayland funds discussed the possibility</p> <p>25 of using somebody other than RCM for FX</p>

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